

No. 274.

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JAMES H. MCKENNEY

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Brief of Dudley, Michener &  
DeWees for Appellee

Filed April 25, 1898.  
Supreme Court of the United States.

OCTOBER TERM, 1897.

THE UNITED STATES,

*Appellant.*

VS.

CHARLES A. GARTER.

No. 274.

*Appeal From the Court of Claims.*

**BRIEF OF APPELLEE.**

W. W. DUDLEY,  
L. T. MICHENER,  
F. T. DEWEES,  
*Attorneys for Appellee.*

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IN THE  
**Supreme Court of the United States.**

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THE UNITED STATES, }  
Appellant, }  
vs. } No. 274.  
CHARLES A. GARTER, }

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*Appeal from the Court of Claims.*

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**Counter Statement.**

The facts in this case are briefly stated in the Findings of Fact by the Court of Claims. (Trans. 3 to 5 inc.)

Charles A. Garter, whilst United States District Attorney for the Northern District of California, was employed by the Attorney-General as *special counsel* in a case on appeal from a judgment rendered by the District Court of Alaska to the Circuit Court of Appeals for the Ninth Circuit then in session at San Francisco, California.

The Attorney-General agreed that he was to be compensated for his service.

His claim for service was approved by the Circuit Court of Appeals in the sum of \$450. The Attorney-General fixed the amount at \$300.

During the year 1893 Claimant was paid the maximum compensation allowed by law as District Attorney.

The claim was referred by the Secretary of the Treasury to the Court of Claims under the provisions of 1063 R. S.

San Francisco is situated within the Territorial limits of the Northern District of California.

*Argument.*

The services rendered by Appellee were not *germane* to his duties as District Attorney for the Northern District of California.

See 771 R. S., as applicable to duties of district attorneys, is as follows:

"It shall be the duty of every district attorney to prosecute in *his* district \* \* \* all civil actions in which the United States are concerned."

Certain specific duties are added: for example, title to lands purchased by the United States (355 R. S.), National Banks (380 R. S.) and prize cases.

His duties as district attorney are confined to his district and by necessary implication to Courts within "his district" in which he is the law officer.

The district of the Circuit Court of Appeals for the 9th Circuit is not in any respect "his district," beyond the fact that sessions of that Court may be held at San Francisco, not by reason of its being within the geographical limits of the northern district of California, but because that city is within the geographical limits of the 9th Circuit.

The services rendered were in a case arising in Alaska. The hearing at San Francisco was only because the Circuit Court of Appeals happened to be in session in San Francisco at the time. That Court would have had equal jurisdiction of the subject-matter in any other locality in which it was authorized to hold its sessions.

The service rendered was therefore not germane to Appellee's duties as district attorney for the Northern District of California.

It would seem to follow that, if the performance of services for which compensation is claimed is not germane to Appellee's office of district attorney, the appointment for the performance of such services whether to a district attorney or not would be the appointment of a special attorney. The fees of such special attorney would not be regulated by the fee bill, but by the amount approved by the Attorney-General.

It is admitted by Appellant that the services rendered in this case are neither covered by the fee bill nor can they be assimilated. The point made being that as the services were rendered within the territorial lines of his district they were merely extra services.

If it were true that these services were merely extra services within Appellee's district, which is controverted, they were special services for which compensation should be allowed.

The rule that independent employment in service not incident to official duties should be compensated is decided in *United States vs. King* (147 U. S. R., 676,679).

In *Perry's case* (28 C. Cls., 483, 491) and *Melchrist case* (31 C. Cls., 403) the authority of the Attorney-General to appoint district attorneys as special attorneys is reviewed with special reference to Secs. 770, 823, 824, 825 and 827 R. S.

In *Smith's case* (159 U. S., 346, 356), this Court said:

"It is essential to the interests of this Government that in all suits criminal and civil, in which it is interested, the Attorney-General shall be at liberty to call upon the district attorney to represent it."

That service not covered by the fee bill or assimilated thereto may be paid for on the approval of the Attorney-General would seem to be beyond question. *Perry's case, supra*; *King's case, supra*; *Act of June 20, 1874* (Supp. R. S. p. 18); *Act of October 2, 1888* (25 S. L. 541), repeated every year thereafter.

On the question of maximum compensation, which is vital in this case, the Court is referred to the opinion in the Court below.

If the duties performed were not, as above claimed, germane to Appellee's office of district attorney; if they did not arise and were not performed in his district, but in the district of the 9th Circuit; if he was an assistant to the district attorney of Alaska, he was in fact a special attorney duly appointed by the Attorney-General in an independent employment, the compensation for which bears no relation to his duties as district attorney for the Northern district of California. In such case the amount of compensation is fixed by the Attorney-General.

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